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Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Annex I. Regulation[1]

Article 1. Appointment of the registrar

The [the name of the appropriate executive or ministerial authority to be specified by the enacting State] is authorized to appoint and dismiss the registrar, and determine the registrar's duties.

Article 2. Public access

1. To submit a security right notice, a person must:

(a) Use the appropriate notice form prescribed by the [registrar] [Regulation];

(b) Identify itself in the manner prescribed by the registrar; and

(c) Have paid or made arrangements to pay to the satisfaction of the registrar any fee prescribed by the [registrar] [Regulation].

2. To submit a search request to the registry, a person must:

(a) Use the search request form prescribed by the [registrar] [Regulation]; and

(b) Have paid or made arrangements to pay to the satisfaction of the registrar, any fee prescribed by the [registrar] [Regulation].

3. The reason for the rejection of access is communicated by the registrar to the registrant or searcher as soon as practicable.

[*Note to the Working Group. The Working Group may wish to consider whether both alternatives in square brackets in subparagraphs 1 (a) and (c), and 2 (a) and (b) of this article may be retained to leave it to each enacting State to determine whether these matters should be left to the registrar or settled in the Regulation. The Working Group may also wish to note that the term "registrar" is used instead of the term "registry" as the latter term is defined as a system and not as a person (the registrar may need to be defined to include the registry staff).*]

Article 3. Rejection of a security right notice or search request

1. The registration of a security right notice is rejected by the registrar if no information is entered in one or more of the required designated fields or if the information provided is not legible.

2. A search request is rejected by the registrar if no information is entered in at least one of the fields designated for entering a search criterion or if the information is not legible.

3. The reason for the rejection is communicated by the registrar to the registrant or searcher as soon as practicable.

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[1] Depending on its legislative policy and drafting technique, each enacting State may enact registry-related rules in its secured transactions law, a different law or in administrative rules.

Article 4. No additional conditions to be imposed on access to registry services

1. Information about the registrant's identity is obtained from the registrant and maintained by the registrar in accordance with article 2, subparagraph 1 (b), of this Annex, but verification of that information is not required.

2. Except as provided in article 3 of this Annex, the registrar does not reject the registration or conduct any scrutiny of the content of a notice submitted to the registry for registration.

[*Note to the Working Group: The Working Group may also wish to consider whether in this or other article of the draft Model Law, or in the Guide to Enactment, it should be indicated that, while the date and time of registration is maintained in the public record (see A/CN.9/WG.VI/WP.63/Add.1, art. 31, subpara. 2), the identity of the registrant is maintained in a part of the record of the registry that is not public. The Working Group may also wish to consider whether the identity of the registrant should be maintained in the archives after the notice to which it relates has been cancelled, and thus removed from the public registry record and archived.*]

Article 5. Organization of information in registered notices

The registry record is organized so that:

(a) A unique registration number is assigned to a registered initial security right notice and all registered amendment and cancellation security right notices that contain that number are associated with the initial notice in the registry record;

(b) The identifier and address of the person identified as the secured creditor in multiple registered security right notices can be amended by the registration of a single global amendment notice; and

(c) The registration of an amendment or cancellation security right notice does not result in the deletion or modification of information contained in any associated registered notices.

[*Note to the Working Group: The Working Group may wish to consider whether a definition of the term "registration number" should be included in article 2 of the draft Model Law (A/CN.9/WG.VI/WP.63).*]

Article 6. Integrity of information in registered security right notices

1. Except as provided in articles 8 and 9 of this Annex, information contained in registered security right notices may not be amended or removed by the registrar from the registry record.

2. The information contained in registered security right notices is backed up so as to allow reconstruction in the event of loss or damage.

[Article 7. Obligation to send a copy of a registered security right notice

1. A copy of the information in a registered security right notice, indicating the date and time when the registration of the notice became effective and the registration number, is sent by the registrar to the person identified in the notice as

the secured creditor at the address set forth in the notice, as soon as practicable after its registration.

2. Within [a short period of time, such as 10 days, to be specified by the enacting State] after the person identified in a registered security right notice as the secured creditor has received a copy of the notice in accordance with paragraph 1, that person must send a copy of the notice to the person identified therein as the grantor at the address set forth therein, or if that person knows that the address has changed, at the most recent address known to that person or an address reasonably available to that person.]

[*Note to the Working Group: The Working Group may wish to note that, in view of the decision of the Working Group at its 24th session (see A/CN.9/796, para. 87), this article appears within square brackets for further consideration. The Working Group may also wish to consider whether this article should be split in two, one dealing with the obligation of the registrar and the other dealing with the obligation of the secured creditor. The Working Group may also wish to note that paragraph 2 of this article includes changes aimed at simplifying the rule contained in recommendation 18 of the Registry Guide, on which it is based.*]

Article 8. Removal of information from the public registry record and archival

1. Information in a registered security right notice is removed from the public registry record upon the expiry of the period of effectiveness of the notice in accordance with article 32 or upon registration of a cancellation notice in accordance with article 39.

2. Information removed from the public registry record in accordance with paragraph 1 is archived for a period of at least [a long period of time, such as, for example, 20 years, to be specified by the enacting State] in a manner that enables the information to be retrieved by the registry in accordance with article 33.

Article 9. Language in which information in a security right notice must be expressed

The information contained in a notice must be expressed in [the language or languages to be specified by the enacting State] and in the character set determined and publicized by the registry.

[*Note to the Working Group: The Working Group may wish to consider whether this article should be retained or deleted and the matter addressed therein discussed in the Guide to Enactment. If the Working Group decides that this article should be retained, it may wish to consider its placement in the draft Model Law (for example, whether it should follow article 8 of this Annex, which provides that a notice that is illegible is rejected). Alternatively, the Working Group may wish to consider whether article 36 of the draft Model Law (A/CN.9/WG.VI/WP.63/Add.1) and/or article 15 of the Annex should provide that where the information in a registered notice is not expressed in the required language or languages the registration of the notice is ineffective or ineffective if it would seriously mislead a reasonable searcher.*]

[Article 10. Correction of errors by the registrar

1. If the registrar makes an error or omission in entering into the registry record the information contained in a paper security right notice or erroneously removes from the registry record all or part of the information contained in a registered security right notice, promptly after discovering the need for the correction or restoration, the registrar must

Option A

register a notice to correct the error or omission, or restore the erroneously removed information and send a copy of the notice to the secured creditor.

Option B

inform the secured creditor identified in the registered notice so as to enable the secured creditor to register a notice to correct the error or omission or restore the erroneously removed information.

2. If a security right notice referred to in paragraph 1 is registered, it is effective

Option A

as of the time it becomes accessible to searchers of the registry record.

Option B

as of the time it becomes accessible to searchers of the registry record, except that the security right to which the notice relates retains the priority it would otherwise have under the Law over the right of a competing claimant that acquired its right prior to the registrar's error or omission or the registrar's erroneous removal of the information.

Option C

as if the error or omission had never been made or the information had never been erroneously removed.

Option D

as if the error or omission had never been made or the information had never been erroneously removed, except that the security right to which the notice relates is subordinate to the right of a competing claimant that would have priority if the notice were treated as effective only from the time of its registration and that acquired its right in reliance on a search of the registry record made before the notice was registered, provided the competing claimant did not have actual knowledge of the error or omission or the erroneous removal of the information at the time it acquired its right.]

[*Note to the Working Group: The Working Group may wish to note that the options set out in this article parallel, with the necessary modifications, the options set out in article 38 of the draft Model Law, dealing with the effectiveness of amendment or cancellation notices not authorized by the secured creditor. Accordingly, the Guide to Enactment will explain that an enacting State should take*

into account both articles in determining which option to adopt to ensure that the options selected are compatible.]

[Article 11. Liability of the registrar

Alternative A

Any liability that the registrar may have under other law for loss or damage caused to a person by an error or omission in the administration or operation of the registry is limited to:

(a) An error or omission in a search result issued to a searcher or in a copy of a registered security right notice sent to the secured creditor [up to a maximum amount to be specified by the enacting State]; and

(b) Loss or damage caused by an error or omission on the part of the registrar in entering or failing to enter into the registry record the information contained in a paper security right notice or in erroneously removing all or part of the information contained in a registered security right notice from the registry record [up to a maximum amount to be specified by the enacting State].

Alternative B

The registrar is not liable for loss or damage caused to a person by an error or omission in the administration or operation of the registry.]

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that: (a) alternative A of this article is intended to leave the issue of the liability of the registrar (or the enacting State) for loss or damage caused by an error or omission in the administration or operation of the registry to other law of the enacting State and, if liability is foreseen by that other law, to limit that liability to the types of errors or omissions listed in alternative A (which may be covered by a compensation fund that the registrar or the enacting State may wish to establish and pay from the registry fees); and (b) alternative B is intended to exclude any liability of the registry (or the enacting State) for errors or omissions in relation to the administration or operation of the registry. The Working Group may further wish to note that alternative A does not contemplate any liability for the alleged failure of the registry system to properly or completely enter information directly submitted by a registrant electronically since it would be impossible to prove that this was due to the fault of the system as opposed to the registrant's own error or omission but that the secured creditor is still protected since the registrar is obligated to send a copy of the registered notice to the secured creditor who can then verify the accuracy and completeness of the information. Finally, the enacting State may also wish to address liability for false or misleading information provided by the registrar or registry staff to registrants or searchers.*]

Article 12. Determination of grantor identifier

1. Where the grantor is a natural person:

(a) [Subject to subparagraph 1(c), the] [The] identifier of the grantor is the name of the grantor, as it appears in [the official documents on the basis of which the grantor's name should be determined and the hierarchy among those official documents, to be specified by the enacting State];

(b) [The enacting State should specify the various components of the secured creditor's name that must be entered in the prescribed registry notice form and provide the designated fields for each component in the notice]; and

(c) [The enacting State should address the possibility that the name of the grantor as it appears in the relevant document or source specified in subparagraph 1(a) may have been changed in accordance with applicable change of name law and whether, in this eventuality, it should specify that the new name of the grantor should be entered.]

2. Where the grantor is a legal person, the grantor identifier is the name of the grantor that appears in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person.

3. [The enacting State should specify whether additional information must be entered in the designated field of the prescribed registry notice form in special cases, such as where the grantor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

Article 13. Determination of secured creditor identifier

1. Where the secured creditor is a natural person, the secured creditor identifier is the name of the secured creditor as it appears in [the official documents on the basis of which the secured creditor's name should be determined and the hierarchy among those official documents, to be specified by the enacting State].

2. Where the secured creditor is a legal person, the secured creditor identifier is the name of the secured creditor that appears in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person.

3. [The enacting State should specify whether additional information must be entered in the designated field of the prescribed registry notice form in special cases, such as where the grantor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

Article 14. Sufficient description of encumbered assets

1. A generic description that refers to all of the grantor's movable assets within a generic category includes all of the grantor's present and future assets within that category.

2. A generic description that refers to all of the grantor's movable assets includes all of the grantor's present and future movable assets.

Article 15. Impact of errors in required information

1. The secured creditor is responsible for ensuring that the information in a security right notice is set forth in the correct designated field in the notice and that the information is accurate and complete, and conforms to the requirements of the Law and the Regulation.

2. An incorrect statement of the grantor identifier in a security right notice does not render the registration of the notice ineffective if the notice would be retrieved by a search of the registry record using the grantor's correct identifier as the search criterion.

3. Except as provided in paragraph 4, an incorrect or insufficient statement of the information required in a security right notice other than the grantor's identifier does not render the registration of the notice ineffective unless the error would seriously mislead a reasonable searcher.

[4. An incorrect statement in a security right notice with respect to the period of effectiveness of registration[2] or the maximum amount for which the security right may be enforced,[3] does not render the notice ineffective[, except to the extent it seriously misled third parties that relied on the information set out on the notice].]

5. An incorrect statement of the grantor identifier in a security right notice does not render the registration of the notice ineffective with respect to other grantors correctly identified in the notice.

6. An insufficient description of an encumbered asset in a security right notice does not render the registration of the notice ineffective with respect to other encumbered assets sufficiently described.

[*Note to the Working Group: The Working Group may wish to consider whether the bracketed text at the end of paragraph 4 (which is drawn from rec. 29, subpara. (c) of the Registry Guide, which in turn is drawn from rec. 66 of the Secured Transactions Guide) should be retained. Whether the period of effectiveness or maximum amount indicated in the notice is greater or lower than it was actually intended, the notice is effective and third parties relying on the notice as it appears on the registry record are protected (this point may be clarified in the Guide to Enactment or in para. 4 of this article). In this respect, the Working Group may wish to note that the Guide to Enactment will explain that: (a) the reference to a reasonable searcher in paragraph 3 means that the "seriously misleading test" in this paragraph is objective (that is, it is not necessary for a competing claimant to establish that it was actually misled as a result of the error in order for an error that would be seriously misleading from the perspective of a reasonable searcher to render a registration ineffective); and (b) the reference in paragraph 4 to parties that actually relied to their detriment on an erroneously stated registration period or maximum amount in a registered notice means that the "seriously misleading test" in this paragraph is subjective (that is, a third party challenging the notice needs to establish that it was actually misled as a result of the error; see Secured Transactions Guide, chap. IV, paras. 84 and 96).*]

Article 16. Secured creditor's authorization

In the case of a change in the secured creditor identified in a registered initial security right notice, the new secured creditor may register an amendment or cancellation security right notice relating to the initial notice at any time after the change.

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[2] This provision will be necessary, if the enacting State implements option B or C of article 32.

[3] This provision will be necessary, if the enacting State implements article 34, subparagraph (e).

Article 17. Information required in an amendment security right notice

1. An amendment security right notice must contain the following items of information in the designated field for each item:

(a) The unique registration number assigned by the registry to the initial notice to which the amendment relates; and

(b) The information to be added, deleted or changed, as the case may be.

2. An amendment notice may relate to one or more than one item of information in a notice.

Article 18. Global amendment of secured creditor information

Option A

A person may register a single global amendment security right notice to amend its identifier and address in all registered security right notices in which it is identified as the secured creditor.

Option B

A person may request the registrar to register a single global amendment security right notice to amend its identifier and address in all registered security right notices in which it is identified as the secured creditor.

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, if an enacting State adopts the first option stated in this article, it will need to establish special access procedures to enable a person to identify all notices in which it is named as the secured creditor and to register a global amendment notice, since the identifier of the secured creditor is not a search criterion generally available to the public for searching the public registry record.*]

Article 19. Information required in a cancellation security right notice

A cancellation security right notice must contain in the designated field the unique registration number assigned by the registry to the initial notice to which the cancellation relates.

Article 20. Compulsory registration of an amendment or cancellation security right notice

1. In a case falling within subparagraphs 1(b) to (d) of article 39, the secured creditor may charge the grantor any fee agreed between them for registering an amendment or cancellation security right notice.

2. Notwithstanding paragraph 1, no fee or expense may be charged or accepted by the secured creditor for complying with a written request from the grantor sent in accordance with paragraph 2 of article 39.

Article 21. Search criteria

A search of the public registry record may be conducted according to:

(a) The identifier of the grantor; or

(b) The registration number assigned to the registered security right notice.

Article 22. Search results

Option A

1. A search result indicates the date and time when the search was performed and either lists any registered security right notices that contain information that matches the search criterion provided by the searcher exactly and sets forth the registration history and all the information contained in these notices, or indicates that no registered notice contains information that exactly matches the search criterion provided by the searcher.

Option B

1. A search result indicates the date and time when the search was performed and either lists any registered security right notices that contain information that matches the search criterion provided by the searcher exactly and closely, and sets forth the registration history and all the information contained in these notices, or indicates that no registered notice contains information that exactly or closely matches the search criterion provided by the searcher.

2. An official search certificate indicating the search result may be issued by the registrar at the request of the searcher.

[*Note to the Working Group: The Working Group may wish to consider whether paragraph 2 of option B of this article should apply only to searches against the grantor identifier and not the registration number if the enacting State implements a close-match system. There does not seem to be a commercial or practical reason for close matches with respect to registration numbers. The Working Group may also wish to note that the Guide to Enactment will explain that if an enacting State chooses to implement the type of close match system contemplated by alternative B, the rules used by the registry for determining what constitutes a close match should be specified and publicized.*]

Article 23. Fees for the services of the registry

Option A

1. The following fees are payable for the services of the registry:

(a) Registration of a security right notice:

(i) Paper: [...];

(ii) Electronic: [...];

(b) Searches:

(i) Paper: [...];

(ii) Electronic: [...];

(c) Certificates:

(i) Paper: [...];

(ii) Electronic: [...];

2. The registry may enter into an agreement with a person to establish a registry user account to facilitate the payment of fees.

Option B

The [administrative authority to be specified by the enacting State] may determine the fees and methods of payment for the services of the registry by decree.

Option C

The following services of the registry are free of charge [types of service to be specified by the enacting State.]